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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,852	12/03/2004	Norbert William Sucke	BM-160PCT	7270
Friedrich Kueff	7590 10/06/200 ner	EXAMINER		
Suite 910	vanua	FLANIGAN, ALLEN J		
317 Madison Avenue New York, NY 10017			ART UNIT	PAPER NUMBER
			3744	
			MAIL DATE	DELIVERY MODE
			10/06/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
10/516,852	SUCKE ET AL.		
Examiner	Art Unit		

NOTICE OF APPEAL 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  MENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: ☐ (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): ☐ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  The or purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: 1-4, 6, 7.  Claim(s) rejected: 5.  Claim(s) withdrawn from consideration: ☐ .  AFFIDAVIT OR OTHER EVIDENCE  8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because the affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because applicant failed to provide a showing of good and sufficient reasons why		Allen J. Flanigan	3744					
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application, applicant must intelly file one of the following replies: (1) an amendment, affidiaty, or other avidency, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.11; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ☑ The period for reply expires ② months from the mailing date of the final rejection.  b) ☐ The period for reply expires ② months from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS for THE FIRML REJECTION. See WFEP 705 07(1).  Extensions of time may be obtained under 37 CFR 1.195(a). The date on which the petition under 37 CFR 1.136(s) and the appropriate extension fee number 37 CFR 1.176(s) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action. (2) as many reduce any examed patent term adjustment. See 37 CFR 1.776(b).  NOTICE OF APPEAL  □ The Notice of Appeal was filed on A brief in compliance with 37 CFR 4.137 must be filed within two months of the date of Notice of Appeal was been filed, any reply must be filed within the time periods of reply originally set in the mail of the appeal. Since a Notice of Appeal was been filed, any reply must be filed within the time periods of reply originally set in the filed of the appeal. Since a Notice of Appeal was been filed, any reply must be filed within the time periods of rhin in 37 CFR 41.37(a).  AMENDMENTS  □ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise the issues that would require further consideration and off or search (see NO	The MAILING DATE of this communication appe	ars on the cover sheet with the c	orrespondence add	ress				
application, applicant must timely file one of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.14. The reply must be filed within one of the following time periods:  a) \( \extstyle The period for reply expires 5_months from the mailing date of the final rejection, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: (It bot is checked, check either box (a) or (b), ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY								
a) The period for reply expires 2_months from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire sort (1) the mailing date of the Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examer Note: If tox 1 is checked, check either box (6) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee was feed from (1) the experiment of the other bordered statutory period for reply originally set intel 05ffccc. The 100 correct of the period of the final rejection, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, over if timely filed.  MOTICE OF APPEAL 2.  If the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal was filed on yer reply must be filed within the time period set forth in 37 CFR 41.37(a). The appeal of 37 CFR 41.37(a), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Since a Notice of Appeal was filed on yer reply appeal.  AMENDMENTS	application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Appetor Continued Examination (RCE) in compliance with 37 C	replies: (1) an amendment, affidavit eal (with appeal fee) in compliance v	t, or other evidence, www. with 37 CFR 41.31; or	hich places the (3) a Request				
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have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL  2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 (e)), to avoid dismissal of the date of filling the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3. The proposed amendment(s) filed after a final rejection, but prior to the date of filling a brief, will not be entered because (a) They raise the issue of new matter (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: (See 37 CFR 1.116 and 41.33(a)).  4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). Applicant's reply has overcome the following rejection(s):  5. Applicant's reply has overcome the following rejection(s):  6. Newly proposed or amended claims) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a)   will not be entered, or b)   will be entered and an explanation of how the new or amended c	b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO							
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12. □ Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s) 13. □ Other: /Allen J. Flanigan/	11. 🛮 The request for reconsideration has been considered but	t does NOT place the application in	condition for allowan	ce because:				
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Continuation of 11. does NOT place the application in condition for allowance because: applicants' arguments are based on a physical impossibility, i.e. that a helically shaped fluted tube (with a single flute extending in spiral fashion about a tube axis as in Sakaya et al) will have varying diameters measured perpendicular to the axis. Such single flute helical profiles inherently exhibit constant diameter along the axis, since the protruding section along one side is necessarily diametrically opposed by the indented portion on the opposite side. While an inaccurate or sloppy draftsman's rendering may appear to show otherwise, such cannot be the basis for ignoring an inherent property of the tubing disclosed in Sakaya et al. The varying diameter described by the applicants is an attribute of annularly corrugated tubes, where the profile is formed circumferentially about the tube axis rather than helically (compare, for example, Figs. 2 and 3 of US patent 2,913,009 to Kuthe).